

**STOPPAGE OPERATOR / SEWER
ENVIRONMENT**

MEMORANDUM OF UNDERSTANDING

between the

CITY OF MEMPHIS

and

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 369D**



**EFFECTIVE
JULY 1, 2011
THROUGH
JUNE 30, 2013**

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ARTICLE 1 PREAMBLE

This Memorandum of Understanding is entered into by the City of Memphis, hereafter referred to as the City or Employer, and the International Union of Operating Engineers Local 369D, hereafter referred to as the Union.

The City of Memphis is engaged in the operation and maintenance of sanitary sewers and the parties to this Memorandum are desirous of entering into this Agreement to formalize the relationship between the parties.

ARTICLE 2 RECOGNITION

Section 1. The City recognizes I.U.O.E., Local 369D to be the sole bargaining agent for all regular, full time employees holding positions listed in Appendix A of this Agreement. Such bargaining shall be understood to be for wages, hours of work, and other conditions of employment to the fullest extent provided by the applicable laws of the City of Memphis and the State of Tennessee.

Section 2. The City grants exclusive recognition to the Union in accordance with the City Council labor policy, which provides that no other labor organization shall be recognized unless they be designated by a majority of the non-supervisory personnel of the appropriate classification.

ARTICLE 3 MANAGEMENT RIGHTS

Section 1. The City of Memphis has the exclusive right to determine the purpose of each of its agencies and to set the standards of service to be offered to its citizens. It is also the right of the City to direct its employees to hire, promote, demote, transfer, assign or retain employees in positions within an agency or department, and to

establish reasonable work rules which do not conflict with this Agreement; however, any work rule change that affects an established system shall be discussed with the Union in advance of change. The City also has the right to suspend, discharge or take other disciplinary action against its employees for just cause and in accordance with the provisions of the Memorandum of Understanding; and to relieve its employees from duty in the event of lack of work, funds, or for other legitimate reasons provided, however that nothing contained in this article shall be deemed to deny the rights of any employee to submit a grievance concerning the application or interpretation of terms of this Memorandum of Understanding or a claimed violation, misinterpretation, or misapplication of the rules or regulations of the City affecting the terms and conditions of employment. All rights and duties of both parties are specifically expressed in the Memorandum of Understanding and each of the parties reserves to itself the rights and privileges otherwise accorded it whether by Charter, statute, or common law with respect to any matter not expressly covered by this Memorandum of Understanding. The City's failure to exercise any function or right reserved to it, or its exercising any function or right in a particular way shall not be deemed a waiver of its right to exercise such function or right in the future. The failure of management to use any rights identified in this Article shall not remove such rights from management.

Section 2. If it is determined by the Mayor or Division Director that civil emergency conditions exist, such as disasters or other catastrophes, the non-economic provisions of this Agreement may be suspended by the Mayor or the Division Director, during the time of the declared emergency. The provisions of this Agreement will not be suspended unless The Business Agent or his office is first advised in advance, or no later than the next business day after the declared emergency.

ARTICLE 4 NON-DISCRIMINATION

The Union and the City agree that no employee shall be illegally discriminated against because of union membership, or union activity, use of the grievance procedure, sex, marital status, race, religion, creed, national origin, disability, age or political affiliation.

The term "employee" in this Agreement, or use of the male gender, shall be construed as including female.

The Union and management shall not coerce, intimidate, or in any other manner, discriminate against any employee who exercises his/her right to join or not join or continue or discontinue membership in the Union. No employee shall be denied promotion or any other benefit, because of his/her membership or lack of membership in the Union.

ARTICLE 5 UNION STEWARDS-UNION REPRESENTATION

Section 1. The City recognizes and agrees to deal with the accredited Union Steward, business agents, and assistant business agents of Local Union #369D, as well as the president and/or international representative of the I.U.O.E., as set forth in the grievance procedure.

Section 2. The City agrees that non-employee officers and/or representatives of the Union shall have reasonable access to the premises of the City during work hours for the purpose of assisting in the adjustment of grievances and conducting other union business provided such visitations shall be for the reasons of administration of this Agreement. Only representatives of the Union previously furnished to the City in writing

by the Union, shall be permitted to come on the premises of the City for the purpose of investigating and discussing grievances provided prior notification has been given to the Division Director of his designated representative and, provided a Union representative does not interfere with the work of the employees. Any Union meeting with all assigned personnel to that area, which is called by the Union Representative or Business Manager, may be held on City property during working hours upon request and approval of the Division Director or his designee, such approval shall not be unreasonably withheld.

Section 3. A written list of Union Officers and Stewards shall be furnished to the Manager of the Labor Relations Office in care of the City Human Resources Division within ten (10) days after their designation.

The list shall identify the employee, position held, and the term of office. The Union shall notify the City Director of Human Resources within five (5) days of any change in status of Union Officers and/or Stewards.

Section 4. The appropriate Union Steward shall be granted reasonable time off during working hours to investigate grievances, or to settle complaints which have not become formal grievances, upon requesting and receiving approval of the Supervisor. Such approval shall not be unreasonably withheld. The appropriate Union Steward may investigate grievances, or settle complaints of bargaining unit employees.

Section 5. In the event that a bargaining unit employee's attendance is required by the City or the Union at either a grievance hearing or arbitration hearing and said employee is not the aggrieved employee and the hearing is not during the employee's scheduled work shift, said employee shall be paid at the regular rate of pay for all time spent in the above mentioned hearing.

Professional Conduct

Realizing that all matters of controversy between the City and the Union shall be resolved through the grievance procedure set forth herein, management, union representatives, stewards, and officers pledge themselves to the highest standards of professional conduct and agree that abusive conduct (verbal or physical), intimidation, coercion or any other form of misconduct shall not be tolerated at any time.

ARTICLE 6 GRIEVANCE AND ARBITRATION PROCEDURE

Any grievance, defined as an alleged violation of an express provision of the Memorandum of Understanding, shall be handled in a simple and direct manner as follows:

(It is agreed by the Union that employees covered by this Agreement shall make an exclusive election of remedy prior to filing a second step of the grievance or initiating action for redress in any other forum. Such choice shall be made in writing on the form to be supplied by the City.)

Step 1. The aggrieved employee and the Union Steward shall discuss the grievance with the immediate Supervisor within ten (10) working days of the date of the alleged grievance or the employee's knowledge of its occurrence. The immediate Supervisor shall attempt to adjust the dispute and shall respond to the aggrieved employee within ten (10) working days.

Step 2. If not resolved at Step 1, the grievance shall be reduced to writing, indicating the specific Article allegedly violated and a brief description of the grievance, within ten (10) working days of the grievance or the employee's knowledge of its occurrence, or within ten (10) working days of the immediate Supervisor's response,

whichever is longer. The unit manager shall, upon receipt of the written grievance from the Union, discuss the matter with the aggrieved employee and the Union Steward. The unit manager will respond in writing within ten (10) working days.

Step 3. The Union shall notify, in writing, the Division Director within ten (10) working days, its acceptance or rejection of the answer at Step 2. If appealed, the Division Director, or his designee, will conduct a thorough discussion with the appropriate management personnel, the aggrieved employee, the Steward, and the Business Agent or designee within ten (10) working days. This time may be extended by mutual agreement. The Division Director or his designee shall then give his answer within ten (10) working days following the date of the hearing.

The failure of the appropriate Union Representative to respond as required in any of the steps within the time provided shall be considered as acceptance of the answer. The failure of the appropriate City Representative to respond as required in any of the steps of the grievance within the time provided shall be considered as upholding the grievance.

Step 4. The Union shall review the answer of the Division Director and indicate in writing, its acceptance or rejection or request for arbitration if desired, within fifteen (15) working days after the rendering of the Division Director's written decision unless, extended by mutual agreement. The decision of the Division Director shall be mailed by certified mail to the Union office, return receipt requested. The Union, in submitting its request for arbitration, shall send said request by Certified Mail to the Mayor, with a copy to the Labor Relations Manager by regular mail. It is understood that the proper Union Representatives may be involved at both Steps Three (3) and Four (4). The Union shall have the right to take up suspensions and/or discharge within ten (10)

working days at Step 3 of the grievance procedure and the matter will be handled in accordance with the procedure through the Arbitration Step, if deemed necessary.

ARBITRATION PROCEDURE

The arbitrator shall have access to all written statements and documents pertaining to the appeals in the grievance, but the arbitrator shall have no power to amend, revise, add to, subtract from, or modify any terms of this Memorandum of Understanding, or any Memorandum made supplementary thereto. The arbitrator shall be jointly selected by the Union and the City.

If, within five (5) days after the request for arbitration is made, the Union and City fail to agree upon the appointment of an arbitrator, a request will be made to the American Arbitration Association for a list of five (5) arbitrators. The Union and the City may select one from the list of arbitrators or if they still cannot agree, the following procedures shall be followed as stated below:

The party presenting the grievance shall be given the first opportunity to strike the name of one of the arbitrators contained on said list. The other party may then proceed to strike a name and this procedure shall continue until one arbitrator's name remains. The arbitrator whose name remains shall be designated as the arbitrator. In the event the arbitrator designated declines to act, the procedure of striking names will be reinstated until an arbitrator willing to act has been selected.

The arbitrator shall hold a hearing as expeditiously as possible after the receipt of the request to arbitrate and full opportunity shall be given both parties to be heard and to examine and cross examine witnesses and offer other evidence. The arbitrator's decision shall be in writing and shall set forth the arbitrator's finding of facts, opinion, and conclusion on the issues submitted. The arbitrator shall render his decision not

later than thirty (30) calendar days after the conclusion of the final hearings.

The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the applicable laws or rules and regulations having the force and effect of law. The fee and expenses of the arbitrator and the cost of a written transcript for the arbitrator shall be divided equally between the Division and the Union, provided, however, that each party shall be responsible for compensating its own representatives and witnesses, and purchasing its own copy of the written transcript. The decision of the arbitrator shall be final and binding on the parties.

It is agreed that the City shall make available any employee to testify at the request of the Union when such persons have information involving the action being arbitrated. This request shall be made in writing to the Director of Human Resources or his designated appointee as early as feasible but at least seventy-two (72) hours prior to the hearing.

If an employee has a matter appealed to the Civil Service Commission, that appeal must be withdrawn prior to the matter being submitted to arbitration. Such withdrawal must be in writing and directed to the Commission by the employee or the employee's attorney.

ARTICLE 7 DEPARTMENTAL DISCIPLINARY PROCEDURES

Section 1. The City and Union agree that the intent of this Article is to provide for correcting deficient work performance and/or behavior in a manner that is fair and equitable to both parties. This Article recognizes the fundamental right of management to instruct, correct, counsel, admonish, and if necessary, officially discipline an

employee. The City will not discipline or discharge any full time regular employee without just cause.

Section 2. The City and the Union agree with the principles of progressive and corrective discipline where appropriate. Disciplinary action will be only the following and shall begin at Step A, except for major infractions in which case progressive steps may or may not be followed. Tardiness, absenteeism, and sick leave abuse shall be considered a similar offense, for the purpose of progressive discipline.

1. Oral Reprimand
2. Written Reprimand
3. Suspension
- A. Discharge

If the conduct or job performance of an employee is questioned to a degree that it will become a disciplinary matter of permanent record in the employee's personnel file, a Union Steward must be present, if requested by the employee or the City. Notice to the employee will be in writing and shall set forth the reasons for the disciplinary action taken. The City agrees that disciplinary action shall in all instances be given in a timely fashion. Notice to the employee and the Union will satisfy technical complaints. No material placed in the employee's personnel folder including any evaluation of the employee, shall be used to discipline the employee unless a true copy is first given to the employee.

Section 3. Oral and written reprimands may be processed through the regular grievance and arbitration procedure as set forth in Article 6 of this Memorandum. Matters of suspension and discharge may be reviewed by the appropriate Director or his designee to insure that the action taken is appropriate. Once the measure of

discipline is determined and imposed the City will not increase it for the particular action of misconduct unless new facts or circumstances become known. Matters of suspension and discharge may be initiated in Step 3 of the grievance procedure. Any grievance decision which directs compensation for time off shall be made less any temporary earnings or unemployment compensation benefits received during said period.

It is understood that any employee who does not receive any disciplinary action for a period of six (6) months, shall have his or her record cleared for the purpose of progressive discipline.

ARTICLE 8 UNIFORMS

The City agrees to provide a clean uniform (shirt and trousers) each workday for employees covered by this agreement. Employees shall exercise reasonable care to prevent uniform loss and shall be in uniform during working hours. T-shirts approved by management will also be considered proper uniform attire.

ARTICLE 9 HOLIDAYS

Holidays, as governed by Article I, Section 2-2, of the Memphis City Code, shall apply to members of this bargaining unit.

The following days shall be recognized and observed as paid Holidays during the term of this Memorandum of Understanding:

New Year's Day	January 1
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February

Martin Luther King's Memorial	April 4
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4 th Thursday in November
Friday after Thanksgiving	
Christmas Eve	December 24
Christmas Day	December 25

Whenever one of the above holidays fall on either Saturday or Sunday, either the preceding Friday or the following Monday shall be observed as the holiday. Employees will be notified as far in advance as possible concerning the day to be observed as the Holiday.

If the observed holiday falls on the employee's regular day off, the employee will receive an additional eight (8) hours pay for that holiday. If the observed holiday falls on the employee's scheduled vacation, additional time (or an additional days pay) will be granted.

Employees who work on an observed holiday shall receive straight time pay for actual hours worked in addition to their holiday pay, or be allowed to take the actual time worked off with pay at another mutually agreed time.

Holiday pay will not be allowed if the employee did not work on the last scheduled work day before and/or the next scheduled work day after the observed holiday. This requirement will not apply if the employee is off under Death in Family or

Jury Duty.

Employees will be paid at straight time rate of pay for holidays not worked during a time of illness or accident, but such a day will not be charged against leave except as in Article 11.

ARTICLE 10 VACATIONS

Employees shall be granted an annual paid vacation in accordance with the following schedule on length of continuous service:

SERVICE CREDIT	ACCRUAL	EXPLANATION
Up to 6 months	None	N/A
6-month anniversary	5 days (40 hours)	N/A
1-year anniversary	5 days (40 hours)	if hired on/after July 1
	10 days (80 hours)	if hired before July 1
2 nd , 3 rd , 4 th , and 5 th calendar year	10 days (80 hours)	10 days accrue at beginning of year
6 th calendar year	11 days (88 hours)	10 days accrue at beginning of year; 11 th day accrues on 6-year anniversary
7 th calendar year	12 days (96 hours)	11 days accrue at beginning of year; 12 th day accrues on 7-year anniversary
8 th calendar year	13 days (104 hours)	12 days accrue at beginning of year; 13 th day accrues on 8-year anniversary
9 th calendar year	14 days (112 hours)	13 days accrue at beginning of year; 14 th day accrues on 9-year anniversary
10 th calendar year	15 days (120 hours)	14 days accrue at beginning of year; 15 th day accrues on 10-year anniversary
11 th calendar year	16 days (128 hours)	15 days accrue at beginning of year; 16 th day accrues on 11-year anniversary
12 th calendar year	17 days (136 hours)	16 days accrue at beginning of year; 17 th day accrues on 12-year anniversary
13 th calendar year	18 days (144 hours)	17 days accrue at beginning of year; 18 th day accrues on 13-year anniversary
14 th calendar year	19 days (152 hours)	18 days accrue at beginning of year; 19 th day accrues on 14-year anniversary
15 th calendar year	20 days (160 hours)	19 days accrue at beginning of year; 20 th day accrues on 15-year anniversary
16 th calendar year	20 days (160 hours)	20 days accrue at beginning of year
17 th calendar year	21 days (168 hours)	20 days accrue at beginning of year; 21 st day accrues on 17-year anniversary

18 th calendar year	21 days (168 hours)	21 days accrue at beginning of year
19 th calendar year	22 days (176 hours)	21 days accrue at beginning of year; 22 nd day accrues on 19-year anniversary
20 th calendar year	22 days (176 hours)	22 days accrue at beginning of year
21 st calendar year	23 days (184 hours)	22 days accrue at beginning of year; 23 rd day accrues on 21-year anniversary
22 nd calendar year	23 days (184 hours)	23 days accrue at beginning of year
23 rd calendar year	24 days (192 hours)	23 days accrue at beginning of year; 24 th day accrues on 23-year anniversary
24 th calendar year	24 days (192 hours)	24 days accrue at beginning of year
25 th calendar year	25 days (200 hours)	24 days accrue at beginning of year; 25 th day accrues on 25-year anniversary
26 th calendar year and thereafter	25 days (200 hours)	25 days accrue at beginning of year

EXAMPLE 1 (hired on/after July 1):

Date of Employment: 12/15/2001
6-month anniversary: 06/15/2002 (Accrues 5 days to be used by 12/31/2002*)
1-year anniversary: 12/15/2002 (Accrues 5 days to be used by 12/31/2002*)
Beginning of 3rd calendar year: 01/01/2003 (Accrues 10 days to be used by 12/31/2003*)

EXAMPLE 2 (hired before July 1):

Date of Employment: 06/15/2001
6-month anniversary: 12/15/2001 (Accrues 5 days to be used by 12/31/2001*)
1-year anniversary: 06/15/2002 (Accrues 10 days to be used by 12/31/2002*)
Beginning of 3rd calendar year: 01/01/2003 (Accrues 10 days to be used by 12/31/2003*)

***UNLESS CARRYOVER APPROVED**

The rate of vacation pay shall be the employee's regular straight time rate of pay in effect for the employee's regular job on the pay day immediately preceding the employee's vacation period.

Upon request submitted no less than four (4) days in advance of the start of his vacation, an employee shall receive his vacation pay no later than one (1) day prior to the start of this vacation.

Employees requesting use of vacation time will be granted upon approval by his Supervisor, and in not less than four (4) hour increments.

Vacations will be granted, between January 1 and December 31, so far as

possible, in accordance with employee preference and in line with seniority as defined by the Seniority Article 10, Section 1, but measured at the reporting location, but the number of employees off on vacation in a given week shall be determined by the City to assure orderly operation of the respective divisions and departments. Granting of vacation shall not be unreasonably withheld. When a dispute arises between employees in the same classification, the City shall allow the senior employee to have the first choice. There shall be a posted vacation schedule no later than December 1 each year in order to permit employees to express their choice of vacation by December 31, and the list shall contain the number of employees who can go on vacation and the employee's anniversary date. Employees who wish to split their vacation, should indicate their choice on the vacation schedule. Vacation approval shall be posted no later than January 31. Approved vacations may be rescheduled with the unit manager's approval, but not so as to require other employees to reschedule their approved vacations.

ARTICLE 11 SICK LEAVE

Upon completion of sixty (60) calendar days of consecutive service after initial employment, all regular, full time employees shall be eligible to receive pay while absent from work due to sickness to be charged against accumulated Sick Leave.

Unlimited accumulation of Sick Leave begins from the first day of employment at the following rates:

Service Credit	Accrual Rate Effective Date	Accrual Rate Per Month
Up to 5 years (5 year period)	First month of employment	1 day (8 hours)

5 years up to 9 years (4 year period)	First month after 5-year anniversary	1½ days (12 hours)
9 years up to 14 years (5 year period)	First month after 9-year anniversary	2 days (16 hours)
14 years or more	First month after 14-year anniversary	2½ days (20 hours)

EXAMPLE:

Date of Employment: 12/15/2001 (Accrues 1 day per month)*
5-year anniversary: 12/15/2006 (Accrues 1½ days per month beginning 01/15/2007)
9-year anniversary: 12/15/2010 (Accrues 2 days per month beginning 01/15/2011)
14-year anniversary: 12/15/2015 (Accrues 2½ days per month beginning 01/15/2016)

Sick leave will not accumulate while an employee is absent on Sick Leave, fifteen (15) days or longer, unauthorized absence, or during other leaves of absence, except military leave and/or officially granted educational leave.

Pay for Holidays that occur while an employee is on Sick Leave shall not be charged as Sick Leave. If the active employee does not have accumulated Sick Leave, he may select to use his Holiday as a Sick Leave Day. An employee who becomes ill while on vacation and whose illness is substantiated by a doctor's statement, may upon release by the employee's attending physician, have that portion of vacation which was interrupted by illness rescheduled. It shall be the employee's responsibility to report said illness to his Supervisor at the earliest date and present his doctor's statement to his Supervisor upon return to work.

Employees shall be compensated in cash for up to seventy-five (75) days of accumulated unused Sick Leave upon retirement.

The amount of payment for unused Sick Leave is to be calculated at the employee's rate of pay in effect on the pay day immediately preceding the employee's retirement. After completion of sixty (60) days of continuous service, an employee who works three (3) consecutive months without Sick Leave or any unauthorized absence,

will be eligible for one (1) bonus day leave with pay to be taken within twelve (12) months from the day it is earned or be forfeited. Bonus days will be earned in a like manner for subsequent three (3) month periods, so that an employee may earn up to four (4) bonus days a year. Bonus day accrual will only be forfeited when interrupted by six (6) cumulative hours of absence from work due to the use of sick leave benefit or unauthorized leave

If any absence for sickness has not been approved in advance, the employee must notify this supervisor as follows:

First Shift - Within 30 minutes of the start of the shift.

Second Shift - Prior to 30 minutes before the start of the shift.

ARTICLE 12 ALCOHOL, MENTAL ILLNESS

It is agreed between the City of Memphis and the Union to participate in the Alcohol, Mental Illness, and Drug Abuse Rehabilitation Program, as created and governed by the City's Employee Assistance Program, or any other employee assistance program created and implemented by the City. Employees participating will be entitled to use their accumulated vacation time and sick days in accordance with City Policy.

It shall be the responsibility of the employee to strictly adhere to any medical, psychiatric, or other professional care recommendations as well as maintenance programs recommended as a result of the employee's participation in this program. This program does not exempt the employee from appropriate disciplinary action for work related offenses.

ARTICLE 13 LEAVES OF ABSENCE

Leaves of absence without pay may be granted to the regular employees for the following reasons:

Section 1. Military Leave - Military Leave shall be granted in accordance with applicable law.

Section 2. Educational - Regular, full-time employees who have completed one (1) year of continuous employment shall be eligible to receive a Leave of Absence which does not exceed one full year for the purpose of furthering education. Such educational leaves should be determined upon recommendation of the Department Head and with the approval of the Division Director.

Section 3. Personal - Regular City employees who have complete three (3) consecutive months of employment will be eligible to receive Leaves of Absence for such personal reasons as marriage, illness of a member of the family, or other emergencies for a period not to exceed thirty (30) days upon recommendation of the Department Head and with the approval of the Division Director. Such approval shall not be unreasonably withheld.

Section 4. Illness – Regular City employees will be eligible for a Leave of Absence not to exceed six (6) months with an extension up to six (6) months after the exhaustion of the employee's paid Sick Leave because of the prolonged illness of the employee. The request for such Leave of Absence or extension shall contain the recommendation of the physician and the leave shall be granted by the Division Director.

Section 5. Union Business - Union employees elected to Union office and

selected by the Union to do work which takes them from their employment with the employer shall at the written request of the Union, be granted a Leave of Absence (not to exceed one (1) employee). The Leave of Absence shall not exceed 30 days, but it may be renewed or extended for a similar period upon written request at the option of the City.

Section 6. Jury and Witness Duty - regular employees shall be granted a Leave of Absence with pay any time they are required to report for Jury Duty or witness service. Proof of jury service shall be established by submitting a statement from the Jury Commissioner or Clerk of the Court showing the time served. An employee shall be paid for the time lost from scheduled work when legally subpoenaed as a witness to testify in court cases when the employee is neither the plaintiff nor defendant. Employees shall be paid for the time lost from scheduled work as a witness for the City or when sued as an agent of the City. The employee must report for work when the Jury is not in session.

Section 7. Family Medical Leave Act of 1993 - The parties agree to comply with the requirements established by the Family Medical Leave Act of 1993 and the provision of the City of Memphis Personnel Manual Policy, Family and Medical Leave Act Policy, PM-66-06, are incorporated herein by reference.

Section 8. It is understood and agreed no employee may remain off work in excess of one (1) year, the one year to include any combination of paid or unpaid time off.

ARTICLE 14 DEATH IN FAMILY

In the event of a death in the employee's immediate family, the employee will be

authorized three (3) days off at his regular straight time rate of pay. The three (3) days must only include the day before, the day of, and the day after the funeral. If any of these three (3) days occur on the employee's regular days off or on a holiday, the employee will not be given additional time off. Immediate family shall include only the following:

husband, wife, father, mother, brother, sister, son, daughter, mother-in-law, father-in-law, grandmother, grandfather, grandchildren, and properly established foster parents or stepparents, grandparents-in-law, brother or sister-in-law, son or daughter-in-law . As related to mother, father, foster or step-parents, the provision of this article shall apply to only one set of parents:

The employee must provide proof of relationship to the deceased and proof of attendance of said funeral. Additional time may be granted as leave without pay or as paid vacation, when justified by circumstances.

ARTICLE 15 DEATH OF AN EMPLOYEE

In the event of the death of a regular employee while employed by the City of Memphis, all accumulated unused sick leave days up to a maximum of seventy-five (75) days, all accrued wages due including pay for unpaid holidays, vacation, and bonus days, in addition to four thousand dollars (\$4,000.00) free life insurance will be paid to the person entitled thereto as designated by the employee or by law.

In addition, the person entitled as designated by law will receive an amount equivalent to the employee's regular wages for one (1) month after all legally required deductions.

ARTICLE 16 SENIORITY

Section 1 Seniority shall be determined on the basis of actual length of continuous service from the latest date of regular employment with the City for the purpose of vacation preference and lay off. In no instance shall this Article be applied in a manner inconsistent with City policy. Seniority for the purpose of shift preference, transfers, and temporary assignments shall be determined on the basis of the length of service within the employee's current job classification.

All new employees shall be considered probationary for ninety (90) days from the last date of hire. During such probationary period, employees may be discharged without constituting a breach of this Memorandum. At the end of the probationary period employees shall be placed on the seniority list as of the first day of last employment. Probationary periods may be extended when requested by the Division Director and approved by the Director of Human Resources.

Section 2. Employees shall be removed from payroll for the following reasons:

- 1) Resignation;
- 2) Discharge for just cause;
- 3) Absent without report and/or without satisfactory reason for three (3) consecutive working days;
- 4) Is laid off two years;
- 5) Misrepresentation of facts on employment application;
- 6) Failure to notify within ten (10) working days of the date the recall letter is mailed stating whether or not the employee intends to report for work after the lay-off;

- 7) Absence from the job in excess of one (1) year for whatever reason(s)
- 8) Incarceration in jail or prison for five (5) or more consecutive days. Such notice shall be determined to have been sufficiently given if sent to the employee at the last address furnished to the Human Resources Division of the City. A copy of the recall letter will be sent to the Union Office.

Section 3. The employer may make temporary transfers or assignments or reassign employees to positions other than those they normally perform in order to meet the operational requirements of the department. During the term of the temporary transfer to a higher paid classification the employee shall be paid at either the next higher rate of the classification to which he is assigned or 5% over his current rate of pay, whichever is greater. In no instance shall the rate of pay exceed the top rate of interim classification.

Section 4. The City and Union agree with the principles of training for the purpose of career development, advancement opportunities and technical development of special skills. Training opportunities of a specialized nature will from time to time be made available and when such training is made available generally to City employees that training shall be available to employees of this bargaining unit.

Section 5. Notice of all vacancies and/or new jobs shall be posted on all employee bulletin boards and copies of such postings shall be mailed to the local business agent within three (3) days of such posting. The City will at all times determine qualifications for any position.

The City agrees to maintain seniority lists by length of service with the City and by length of service within classification. Seniority lists will be posted on employee bulletin boards and updated quarterly. Any employee may question his seniority status

within ten (10) days of the posting of this seniority list.

Any dispute regarding the order of employees in seniority lists should be resolved through discussion between the Division Director and the Business Agent.

The permanent filling of a vacancy shall be on the basis of the most qualified applicant.

In the event that all applicants' qualifications are relatively equal, seniority shall be the determining factor. After the selection has been made by the Supervisor, it will be reviewed by the Director of Public Works to ensure that the proper selection was made. However, when a senior employee is passed over and not chosen for promotion, the interviewing Supervisor will inform the employee of the reason.

ARTICLE 17 REPORTING AND CALL BACK PAY

Section 1. Reporting Pay - Any employee who is scheduled to report for work and who presents himself for work as scheduled shall be assigned a minimum of four (4) hours work. When an employee reports for work as scheduled, and is excused from duty before completing four (4) hours work, the employee shall be paid at this regular rate for four (4) hours work.

Section 2. Call Back Pay - Any employee or employees who are called to report for work prior to their regularly scheduled time, or any employee who completed his regular shift and is then called back to perform a task will be guaranteed a minimum of four (4) hours pay at the appropriate rate. No employee will be required to work more than sixteen (16) hours in a twenty-four (24) hour period. However, the employee can work more than sixteen (16) hours in a twenty-four (24) hour period on a voluntary basis.

ARTICLE 18
HEALTH, SAFETY & SANITARY CONDITIONS

The employer will make a reasonable effort to maintain sanitary conditions throughout the facility for the purpose of routine maintenance, preventives maintenance, routine sampling and general operation of the facility; however, it is understood that during emergency situations or should a piece of equipment need immediate repair that is detrimental to the proper operation of the facility, there may not be adequate time for such measures needed for sanitary maintenance. The Health and Safety Committee was established to correct, maintain, and improve effective safety and sanitary conditions. The Committee shall review and make recommendations on health and safety and sanitary conditions which affect the well-being of City employees. From time to time, one employee from this bargaining unit may serve on such committee.

The City shall follow all appropriate rules and regulations contained in any State OSHA or Federal OSHA Safety regulations including "Hazardous Chemical Right-To-Know Laws" that are applicable to its facilities.

ARTICLE 19
COMMUNICABLE DISEASE

In cases where employees are assigned to work in areas where they are exposed to communicable diseases such as Tetanus, Typhoid, Typhus, or other similar diseases, and the employees contract such communicable diseases, the employees will be treated for that disease at the expense of the City and will not lose any benefits he or she would otherwise have received had that employee not contracted such disease. To qualify for such treatment and benefits, evidence must indicate such disease was contracted as a part of the job.

The employer shall furnish annual inoculations protecting against Tetanus,

Typhoid, Typhus, Hepatitis B and Influenza at the request of the employee. Arrangements for such requested inoculations will be made by the City so as to least interfere with normal operations and to control costs associated with such inoculations.

ARTICLE 20 ON-THE-JOB INJURY

All on-the-job injuries will be subject to the OJI policies, rules and procedures applicable to all City of Memphis employees and shall not be subject to grievance procedures and arbitration.

ARTICLE 21 BULLETIN BOARDS

The employer agrees to provide reasonable bulletin board space where notices of official Union matters may be posted by the Union Representatives. Bulletin Boards shall be in conspicuous places and accessible to Union Officials.

ARTICLE 22 OVERTIME

Overtime shall be paid at time and one half. Overtime shall be paid for all hours actually worked in excess of forty (40) hours within the employee's normal work week. Holidays, as defined in Article 9 of this agreement which fall within the employee's normal work week, shall be considered as time worked for purposes of overtime computation. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement.

Employees who work six (6) consecutive days shall be paid at a rate of time and one half for all hours worked on the sixth day. The City agrees that overtime will be paid in hourly increments. An employee who uses their seniority or any method of their choice to work the schedule of their preference shall not be considered as working a

sixth (6th) or seventh (7th) consecutive day until a scheduled day off breaks the consecutive days worked.

Overtime will, at times, be required in order to meet workload demands and vacant jobs. Overtime will be offered according to rotating seniority and according to whether or not an employee, in the judgment of the City, can operate the required piece of equipment.

Overtime will not be used in a punitive manner.

ARTICLE 23 SHIFT DIFFERENTIAL

In addition to the established wage rate the City shall pay all employees working shifts reporting between 3:00 p.m. and 10:59 p.m., an hourly premium of \$.45 cents per hour during the full term of this Agreement. Those employees working shifts beginning 11:00 p.m. and 6:59 a.m., an hourly premium of \$.65 cents shall be paid during the full term of the Agreement. These rates shall be based on normal working hours during the shift.

ARTICLE 24 SHIFT / SCHEDULE PREFERENCE

The City shall have the exclusive right to make temporary transfers or assignments for the purpose of training or upgrading of skills for a period of time not to exceed thirty consecutive working days per year.

In the event schedules must be changed due to unforeseen circumstances that may hamper or adversely affect the efficient operation of the crews, it is understood that such changes must be approved in advance by the Director of Public Works.

Employees will be assigned shifts according to seniority with the employee

having the most seniority being given first choice as to shift preference. If the City determines that operational needs require a temporary assignment to a different shift or to different days off, the affected employee will receive two (2) weeks notice in advance of the shift / schedule change. The City will take into consideration equipment knowledge and proficiency in making temporary assignments pursuant to this article.

Shift assignments that are made to accommodate Americans with Disabilities Act (ADA) guidelines shall not be considered to be in violation of this article.

ARTICLE 25 HEALTH CARE INSURANCE

Health Care (Hospitalization) Insurance is offered to eligible, full time employees covered by this agreement as an optional benefit. The City will pay 70% of the premium cost, and the employee will pay 30% of the premium cost which will be paid by payroll deductions.

The City may, on an annual basis, offer eligible employees covered by this agreement an option to join an qualified health maintenance organization as provided by the Health Maintenance Organization Act of 1973, Public Law 93-222, as amended.

ARTICLE 26 LIFE INSURANCE

Life insurance is offered to regular, full-time employees covered under this agreement as an optional benefit. The amount of life insurance offered to eligible employees is equal to one and one-half times the employee's annual base salary.

Employees who remain in the employment of the City on or after the age of 65 will have their life insurance coverage reduced in accordance with the Age Discrimination Employment Act Schedule as listed below to a minimum amount of

\$3,000.00:

<u>Age</u>	<u>Reduced to the following Percentages</u>
65	92%
66	84%
67	77%
68	71%
69	65%
70 but less than 75	50%
75 but less than 80	34%
80 but less than 85	23%
85 but less than 90	16%
90 but less than 95	11%
95 or older	6%

Upon retirement at any age, eligible employees will retain \$3,000.00 coverage.

In addition to this optional insurance, the City agrees to provide \$10,000.00 free life insurance to eligible employees and \$5,0000 to retired employees.

ARTICLE 27 CONTRACTING AND SUB-CONTRACTING

It is the general policy of the City to continue to utilize its employees to perform work they normally perform. However, the City reserves the right to contract out any work it deems necessary in the interest of the general public. In the event that positions are eliminated due to contracting or sub-contracting out, the City will attempt to transfer or place employees so affected in other positions in accordance with City Policy.

ARTICLE 28 UNION DUES

Regular employees (non-probationary) of the City of Memphis may authorize payroll deductions for the purpose of paying Union dues. No authorization shall be allowed for payment of initiation fees, assessments, or fines. The procedure which shall be followed by all employees in authorizing deductions of union dues shall be for each employee to execute a written assignment on the form jointly approved by the Union and the City.

In the event the Union members vote to increase Union dues, the Union shall notify the City at least thirty (30) days prior to the effective date of the dues increase. The dues shall be deducted monthly in an amount certified by the Union and aggregated deduction of all employees shall be remitted together with an itemized statement to the Treasurer of the Union by the tenth (10th) day of the succeeding month after such deductions are made. The Union will indemnify, and hold the City harmless against any claims made or against any suits instituted against the City on account of payroll deduction of Union dues. The Union agrees to refund to the City, any amounts paid to it in error in account of the payroll deduction provision upon presentation of proper evidence thereof. The employee's earnings must be regularly sufficient after all other legal and required deductions are made to cover the amount of the appropriate Union dues. When a member in good standing of the Union is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings.

Employees may discontinue payroll deduction of Union dues by giving written notice to the Union and to the City's payroll office.

ARTICLE 29 WAGES

Effective July 1, 2011 through June 30, 2012, the current wage rates of employees covered by this Agreement will be increased by zero (0%) percent.

Effective July 1, 2012 through June 30, 2013, by February 1st, 2012 either party may request to reopen the wage Article for negotiations. The negotiations will be conducted in accordance with the Impasse Ordinance.

Section 1. The wage structure for the bargaining unit will be based on equipment proficiency effective July 1, 2011:

	HOURLY
CABLE TRUCK	\$18.6030
WASH TRUCK	\$19.3780
VACTOR TRUCK	\$20.7919

Any employee may move to the next wage classification by demonstrating his proficiency on the equipment in that classification. The employee will initiate the process by making a written request that field test be administered. The City will administer the test within fifteen (15) business days of the date of the request. A representative of the Human Resources Division and of the Union will observe the administration of the test. If the employee successfully completes the test, he will receive the wage associated with the new classification beginning the new payroll period immediately following. If the employee does not successfully complete the test, he will not be permitted to request a test re-take for at least six (6) months after the date of the failed test. New employees to the union will begin at the cable truck wage classification. A new employee to the unit will not be permitted to request a field test until he has completed the probationary period.

Section 2. Stoppage Operators who average 8 calls per shift on a weekly (Saturday through Friday) basis with a 5% or less call back rate within 30 days shall receive premium pay in the amount of \$1.00 per hour for all hours worked during each week (Saturday through Friday) that the above conditions are met. The premium pay will be paid at the end of the month following the conclusion of a 30 day call back monitoring period.

Section 3. Stoppage operators who have obtained a State of Tennessee wastewater collection license, Grade 1 shall receive an additional \$50/month above their regular pay, provided said license remains valid and current. Stoppage operators who have obtained a State of Tennessee wastewater collection license, Grade 2 shall receive an additional \$100/month above their regular pay, provided said license remains valid and current. Any cost involved in obtaining and retaining the license is the sole responsibility of the employee.

ARTICLE 30 NO STRIKE

During the term of this Memorandum, the Union agrees that it will not engage in, encourage, or approve any strike, slowdown, or other work stoppage growing out of any dispute relating to the terms of this Memorandum of Understanding. The City agrees that it will not lock out employees during the term on this Memorandum of Understanding. The Union will take whatever lawful steps necessary to prevent any interruption of work in violation of this Memorandum of Understanding, recognizing with the City that all matters of controversy coming within the scope of Memorandum of Understanding shall be settled by the established grievance and arbitration procedure.

ARTICLE 31 SAVINGS CLAUSE

In the event that any provision, article, section, or portion of this Memorandum of Understanding is subsequently declared by legislative or judicial authority to be unlawful, unenforceable or not in accordance with applicable laws, statutes, ordinances, and regulations of the United States of America or the State of Tennessee, all other provisions of the Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding and the parties shall meet as soon as possible to agree on a substitute provision.

ARTICLE 32 NOTICE

Any notice to be given by this Memorandum of Understanding to the City of Memphis or to the Union and not heretofore specified hereunder shall be given to the Human Resources Director of the City, in writing and by certified mail. Any notice to be given to the Union shall be in writing, by certified mail, addressed to the Business Manager, I.U.O.E., Local 369D, at his present address.

ARTICLE 33 TERM OF AGREEMENT

1. This Memorandum of Understanding expressed herein in writing constitutes the entire agreement between the parties and shall become effective July 1, 2011, and shall remain in effect through June 30, 2013.
2. The provisions of this Memorandum of Understanding may be re-opened for negotiations upon written request by the Union no earlier than 120 days and no later than 60 days prior to the stated date of impasse immediately preceding June 30, 2013.
3. During subsequent negotiations, if any, all Articles pertaining to non-economic items in this agreement shall remain in effect until the expiration of this Memorandum.

4. The parties acknowledge that during the bargaining which preceded this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties, after the exercise of that right and opportunity, are set forth in this agreement. Therefore, the City and the I.U.O.E., Local 369D, for the life of this agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter that may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

ARTICLE 34 GENERAL POLICY

Employees are expected to comply with all established policies and procedures of the City of Memphis and the Work Rules applicable to their Division. Changes in work rules shall be discussed with the Union in advance of implementation. Should there exist a conflict between the aforementioned and the Memorandum of Understanding, the Memorandum of Understanding shall apply.

ARTICLE 35 TUITION REIMBURSEMENT

The City will provide Tuition Reimbursement under the provision of the Tuition Reimbursement Policy.

IN WITNESS WHEREOF, the parties have set their hand this, this 25th day of March, 2011 to place into effect the provisions of this Agreement.

FOR THE:

FOR THE:

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 369-D – STOPPAGE**

Martin Patterson 3-21-11
Martin D. Patterson
Business Manager & Financial Secretary

C. H. Pate
C. H. Pate
Chief Negotiator
Assistant Business Manager

Anthony H. Bell
IUOE Local 369-D
Negotiator

CITY OF MEMPHIS

AC Wharton Jr.
Mayor

George Little
Chief Administrative Officer

Quinton Robinson
Director, Human Resources

City of Memphis
Chief Negotiator

